

Town of Milton
Special Town Council Meeting Minutes
Milton Theatre
April 19, 2007

Mayor Post called the regular Council meeting to order at 7:00 p.m.

Councilwoman Betts offered a moment of silence.

Mayor Post called roll.

PRESENT: Councilman Prettyman
Councilwoman Melson
Councilwoman Betts
Councilman Harris
Councilman Frey
Councilwoman Hudson
Mayor Post

Others Present: John Brady

Additions/Corrections to Agenda

C. Frey Made motion to approve agenda; C. Prettyman second. All in Favor say "Aye", Opposed – None. MC.

OLD BUSINESS

Committee Appointment Revisions & Approvals: Add Michela Coffaro to the Ordinance Revisions Committee. Remove Sally Harkins from the Board of Adjustments Committee. Add Denise Southard to the Board of Adjustments Committee. There needs to be 3 members that are from the Historic District on the Commission and Denise Southard resides in the Historic District. C. Betts motions to accept; C. Prettyman Seconds. All in Favor say "Aye", Opposed – none. MC.

Railcars out at Wagoman's West Shores: There are 6 empty cars that are residing on the tracks on the far end of Wagoman's, off Federal Street. George Dickerson: Called both the State, which is the Department of Transit Authority who has control over the tracks. They've promised this that the next time they had a locomotive down here that could move those cars; they would do so, and move them to the west side of Lavinia Street by this Friday. The town has no leverage with regard what to do than to ask that they be moved. As a town, we have done all we can do. Mayor Post: We can give them another week, and we might have to take another avenue as well. John Brady: It's going to be a negotiation with DelDot in convincing them of the urgency in utilizing our state representatives and senators because it's the state. The town has no control over those tracks. They fall under DelDot, so if you are upset, and it affects you, Secretary of Transportation, Carolyn Wickes phone number is in the phone book. C. Hudson: Mr. Gracey assured me that they would be move sometime this week and of course, they haven't. (Read some email and phone exchanges between Mr. Gracey and Mr. Campbell.) I will keep in close contact with Mr. Gracey until this situation is resolved. Mayor Post: Requested C. Hudson to keep in contact with the Town Hall so we don't confuse the issue as we've been in communication through the Town Hall. C. Frey: I see about 30 residents from Wagoman's in the audience. If anyone has any concerns, they might want to speak now. Roy Tursey (212 W. Shore Drive): All 6 cars are clearly marked as flammable materials. I have had contact with a

Hazmat individual who works in that and he said that's as dangerous empty as it is full. So we come to you folks because we feel you have maybe ins or outs. I think that our group is ready to take whatever action necessary to make it happen. However, we would like to go through the Town first; we think that's the appropriate way to attack it. I would implore this group to get together and put as much pressure on them as little as it may be, but at least let them know that we are aware of what's happening and that the people that live in the Town of Milton in that particular area are not happy with what's going on. Keep us posted on it, even a phone call or email or what have you would certainly be appreciated. Mayor Post: I also want to tell you that I want you to realize we are taking it serious. We can put pressure on them; we can possibly have our attorney send them a letter. So I would recommend that we have our attorney send a letter stating this. You need to be calling them. You need to be saying you're not going to accept this and I think that is going to be important. We certainly are taking it serious on our end; we know you are taking it serious, but you need to take it to the next level. Mr. Tursey: That's what we are doing, but we wanted to have it play out first before we did anything else. Mayor Post: I know both George and Stephanie have made several calls regarding this issue, both with DelDot and the Rail to Trail processes. We've put a notice up at Wagoman's and we will keep you posted as it moves along. I feel it helps us when the people move it from out there as well. C. Betts: Mayor, I would like to have a letter sent to our legislature. Mayor Post: That would be excellent. So we will. The two that I would highly recommend are Senator Adams and Rep. Carey. I would say right now to start contacting them because it will only make it happen quicker. C. Betts: And I think we should also contact them by phone. Larry Collette (202 West Shore): My wife was home and called me at work. The engineer guy was in my back yard, the guy that was driving the trains, and he walked up to my wife and said what do these people want us to do, and my wife said that they just want you to park them on the other side by the woods. And he was kind of giving her a hard time. He said they would get them out of there by Wednesday and they are still there. John Brady: Mr. Mayor, also, you have said tonight they're propane tank cars. Propane tank cars are under the supervision of the Delaware State Fire Marshall's Office and the Fire Commission. I am meeting with them tomorrow in an unrelated topic and I will mention it to the State Fire Marshall and we'll use that approach also that there is not supposed to be unauthorized tank farms without their approval. All forms of transportation are under DelDot and I know Mr. Campbell, I'll give him a call also. The placards say they are required under the law but they shouldn't be where they're at.

St. Johns Church, Prettyman Street Closing Request: C. Frey: I'd like to make a motion to have Prettyman Street closed on May 5th from 6am to 6pm for the St. Johns Episcopal Church for their annual yard sale. C. Betts: Second. Mayor Post: We have a motion and a second. All in favor say "Aye". Opposed - None. MC.

Review of Draft Letter Reference Sidewalk Repairs: Mayor Post: Reviewed the draft letter. The sidewalks are deplorable on Chestnut Street; that's one street that I can recall had quite a few bad sidewalks. (Read Draft Letter into record that would be going out.) This letter will go out and hopefully go into a workshop to start addressing this issue because there's many levels of it. C. Frey: The residents will be aware that it is their responsibility? Mayor Post: I think when we talk about the workshop, that's when they will be aware of it being their responsibility. C. Frey: I think you are going to get people that aren't aware of it now are not going to come to the workshop. C. Harris: I agree. I think you might want to put that in the letter. Mayor Post: And also, I thought we were going to send a copy, with this letter, of the ordinance with it being highlighted and I thought that that's what we were going to do with it. Our solicitor suggests that we would add "The intent of this letter is to inform as well as ask for your assistance in regards

to the repair/replacement of sidewalks. Under current Town Ordinances, the property owner is responsible for it's sidewalks on their property." But I think as well with including the ordinance highlighted in yellow that will help a lot; that they can see what is their responsibility. C. Betts: Would May 10th give you enough time? Mayor Post: Tentatively we'll say Monday, May 21st at 7:00pm for the workshop. C. Harris: Can I make a suggestion on that? I think there's a lot of seniors that are going to want to be in bed a little earlier. Mayor Post: Let's say 6:30.

Rails to Trails Presentation: Mayor Post: We have a presentation but Michael Lane has not arrived yet. George: May I suggest that we skip to Item F, since Mr. Lane is not here and I will do my best to present that. Mayor Post: Yes.

Tidewater Contract Review: John Brady: On April 12, 2007, Mr. Brady wrote an Opinion Letter to the Town, Mayor and Council, which he read aloud and is on file. A proper resolution was made and passed and therefore the recommendation, in written form, was that the contract be re-executed. It was understood the request was done and the new contract, with corrections and all proper attachments was made and to be posted on the website.

Executive Session: C. Prettyman: Made motion to enter Executive Session at 7:36 p.m. C. Frey: Second the motion. Mayor Post: Motion and Second, all in Favor say "Aye". Opposed – None. MC.

C. Prettyman made a motion to come out of Executive Session. C. Betts Second. Mayor Post: Motion and second to come out of Executive Session. All in favor say "Aye". Opposed – None. MC

Resolution on Miller vs. Town of Milton: Mayor Post: I noticed that Mr. Lane is still not here so what we will do is move on down to #8 and it's the Resolution on Miller vs. Town of Milton. John Brady: This is a resolution to resolve the pending litigation involving John Miller and the Town of Milton, whereas a mandatory 3rd Circuit Court Appeals mediation was held on April 12, 2007 in Philadelphia, PA regarding Miller vs. Town of Milton and whereas subject to the approval of the Town of Milton's Town Council a resolution to the case was negotiated between the Town Solicitor and Council for Mr. Miller. (Read the Resolution) Any members of Council have any questions? C. Frey: I make a motion that the resolution be accepted as read. C. Prettyman: Second. Mayor Post: We have a motion and seconded. Any discussion on the resolution? C. Frey: I just think that we should go public with this after it's approved in the papers with a Press Release. Mayor Post: We do have extra copies of the resolution for any press tonight and we will also place the resolution on the town's website. Any other discussion? We'll do this by roll call: C. Frey "Yes"; C. Harris "Yes"; C. Hudson "Yes"; C. Prettyman "Yes"; C. Melson "Yes"; C. Betts "Yes"; and Mayor Post "Yes". Motion Carried. John Brady: If you would execute a copy of that I filled one here for you to execute. Mr. Mayor, you previously asked me to act as the press contact for the town on this matter, I will do that. I will talk to the press after the meeting.

George Dickerson: The issue is Rails to Trails. It is a project, Phase 1, that was funded by grant. It is a 3-phase project. The first phase is from Chestnut to Federal Street. The second phase is from Federal Street to Trestle Bridge and the third phase is from the Trestle Bridge to Lavinia Street, along the railroad tracks, whereby the rails and ties would be removed, re-grading and then paving would take place. This project has been underway for 2-3 years at least. The grant was about \$370,000. The State of Delaware, Jeff Nescoda, who is the project engineer for that phase, and Michael Lane met in my office with Stephanie and went over with where they were

with the project so it could be reported on and a deadline was approaching, coming due by June 15th. They were to use these funds by then or lose them. The problem with that is Jeff Nescoda, with DelDot, said the funding for Phases 2 & 3 were not on any approved fiscal budget for 2008 or 2009 and that they would have to be asked for in 2010, which would be Phase 2 and perhaps Phase 3. SO what we're facing is one phase, which is the first phase, and the cost of the project. Becker Morgan is the engineering group, Michael Lane is the engineer who we met with, who at our meeting said he was going to be here tonight. I don't know why he's not here. The amount for where we are now for the total estimated cost which was provided by a subcontracting construction company, who deals with these types of bids, I have those figures and council has been provided with those sheets, the Megee Company report. The total estimated construction cost is \$363,058, but inclusive of that which are under that are the alternate items 1-7. Mayor Post: The things that you need to make the project to work. George: What you get for that figure. Now what the town has expended at this point is approximately \$60,000 in engineering costs to Becker Morgan which has been paid. Mayor Post: Is that stuff we were reimbursed for, the \$60,000? George: That is town's fund and we have not been reimbursed. Mayor Post: So we've already had \$60,000 out of pocket? George: That's right. And we have an addition \$4,800 for an environmental study which takes 3 borings along there to be done and set off which is an additional cost and there was an overseeing of project cost by Becker Morgan, on top of that cost of approximately \$20-\$25,000; that is the estimate. Mayor Post: That is not included in any type of grant? You are talking more out of pocket for the town, plus that is another \$100-\$195,000 more on one phase? George: On alternates, that's correct. Mayor Post: Isn't it nice if we would choose an alternate to have streets lights. Why would you have a trail that you wouldn't have lights to? Or a bench? These are all things that are necessities, not alternates. They sold us a beautiful bill of goods years ago, when I wasn't on Council, with this project. It's extremely deceiving with one phase to go over a cost run, when the whole project was supposed to be \$360,000; and it's about a 60% over-run on one phase and I would assume that that phase, then the phase up to the Trussels, which is probably going to be real costly; and then you have the next phase going out to Wagoman's, so you probably have 4 or 5 more phases and in one phase you're talking about an almost \$250,000 over-run. George: The alternatives, once you get to that bottom line figure of the \$363,000, all of those things includes are these items. I think it's important the public understand this. The alternative additions are landscaping, site lighting, fixed bollards (to stop vehicles from driving down, but would fold down to allow emergency vehicles to enter), benches, trash receptacles, brick pavers (installation only) and brick pavers (material only), but the highest cost in that particular list of one of the add-ons for the project is the sight lighting which was \$118,530 as quoted. Mayor Post: In another issue, were we not informed that the next phase wouldn't even start until 2010? George: There's no guarantee that funding would be available then. There's no funding available in 2008 or 2009, and the earliest one could apply, and it doesn't mean you would be approved, is fiscal year 2010. Mayor Post: I thought we had a million dollars for this project? C. Harris: This is estimated cost, so in the end these various services, contractual things you put out to bid, by the Town of Milton or by the general contractor who oversees the project... George: This would be Becker Morgan, they would put the bids out and that is the dilemma. These bids have to be put out by the first of May, because we are working against a June 15 deadline or the money goes away. C. Harris: By us? We're putting up the stakes for the town? Stephanie Coulbourne: The federal money has to be awarded by early June. C. Harris: Who's doing the bidding process? George: They will prepare the bid documents. C. Betts: Our ex-council person was handling all this. Could we, if possible, get him back here to explain what he had proposed or whatever he can tell us, because he seemed to be handling it. It looks like no one seems to know what was... I think he should explain it to us. George: If that is what Council wants, I will get in touch with

him, but I don't know that he can explain away what these facts are; that's the unfortunate thing. Now there was a letter that we received – not a commitment letter – from Rep. Carey for \$60,000. However, you have to accept the program in order for that money to be awarded from his transportation fund monies. And, unless you approve this in some form, you can't get the other, so that's the bad news. C. Harris: When I was discussing this with you today, you mentioned something to me that concerned me and I want to tell the rest of them, about the soil test that needs to be done. George: I think one of the concerns and one of the questions I had is that the soil borings, or the sampling, that will be taken along the tracks, and the reason for that with the previous years of use of the train track that's there, and the possibility of PCB's leaking from any cars that may be in there. We don't know what the result of that is at this point. When the environmental group prepares the study and comes back with the results, and if they find something, my question is at what cost would it be even if you were to expend these funds, what would be the condition of the soil if a problem was found? C. Harris: Hypothetically, we could have a clean-up. George: I don't know if that would stymie the project, but I think it's always important is to remember this: what are you getting for your money. What you're getting here for your money is removing of the rails, the ties, grading, and blacktop being laid and bollards. That's all you're getting until you expend some of your own monies. And sidewalk connections. C. Harris: In the worse case scenario, what's wrong with that? I mean, if we get nothing else but having the rails taken up, having the blacktop put down. Of course we would love to have it landscaped, to have the bollard, and to have the lighting, but if we're looking at our budget, why not go ahead and do it in phases? Do the blacktop. I know there's a problem with people going through their insecurity and stuff; there's a lot of paths and trails through Lewes that don't have necessarily lighting. Not every trail has a light; maybe you just want to close it off at night instead letting people go down there at night. But at least you're getting the amount of work that we've put money out for, that we've allocated, having that work done and then taking a look in the future of trying to do it more responsibly rather than shutting it down. What's the alternative? We take a look at backing off the project and losing the funding and losing the \$60,000 we've already put into it? So, it's either drop it or have it done halfway or do the whole project and incur some costs. We have three options, right? George: There are four options that you do it; you don't put lighting in and then someone, unfortunately, would succumb to a mugging or something down there as a result of it. What is the liability of the town at that point? C. Hudson: I have ridden on Rails to Trails in PA, on my bicycle, and they don't have lights on those trails. They go from one town to another. But they attract people with money to the towns. They would come on a Friday night with their families, or just people basically between the ages of 30 – 50, with single incomes over \$50,000 and would spend money in the town. They would spend the evenings in town shopping/eating and ride the trails. This brings the right kind of people to the town; it brings money to the town. I would like to see that we start this even as Mr. Harris said, even if it's just blacktopping and removing the tracks so that there can't be any tank cars back there and then later on when we get additional money then add lights and trash receptacles. Even if it's just gravel it's still a great bike path or walking path and it would be a positive addition to this town. Mayor Post: I am tired of settling for second best, and I am tired of always saying we'll just make do. We always just go that little bit. Now if you want to sit here and commit to this, then I am going to take it another step that you need to commit to it the whole way and you need to do it right and it needs to look good. I want to take it even one step further than that. If you are going to commit to this project, then commit to that collapsing park over there that doesn't even have swing sets. So, if you are going to put that kind of money going from one street to another, a couple \$100,000, I think at the same time there needs to be dollar commitments to be put in the park where people will enjoy that as well with a lot more use probably. C. Harris: Now that you've opened that up, that topic up, I've tried to avoid it, lets go

even further with that. First of all, I have a whole problem with the fact that you're looking at 2010 before, to me, one of the major connectors, which is Wagoman's, really gets done so those folks can utilize those trails. Mayor Post: Not 2010. 2010 they said second phase which would only take it to this side of the railroad track, and they've already mentioned that. C. Harris: So that won't really be completed. So you're talking about a project that really will not be completed anyway. Now, for us to take Town funds, when I'm trying to scrape together funds, for the park downtown and compare those funds to Rails to Trails, which is not that it's not important, as you all know, I think all our park systems, all the entrances, the whole Towns' images is important, but I think we need to prioritize and if we don't have the funds; in a perfect world we just draw from the Towns' account and spend money wherever, but we're facing a budget that we have to deal with. And clearly we are going to be way over budget on this project. Now if you are talking about taking the money and putting it here, I think we need to put the money in the park as you said. We have a collapsing park down there. So let's put the money down there whether than putting it up here and I agree what Mary said. I've been all through Jersey, DC, etc., there is not lighting. There's blacktop and woods, so if we had to hold off, and to be honest with you, I went in and sat down with Stephanie and reviewed the plans for this project. I'll be honest with you, there are very few areas that have this type of elaborate landscaping, elaborate benches and elaborate lighting. This project, whoever did this project, and bid this project out, clearly stands to make some money on it. Take a look at the plans. You've got in a very short distance, I'm looking at the landscape plans, you've got 23 Yoshino cherry's at \$350 each with this contract. This contract is pretty much padded and what my fear is I'm looking at \$118,530 for lighting; that is \$14,750 for 8 lamp posts. Whoever did this contract certainly stands to make some money. My feelings are if there's an issue with our budget, if we are trying to be careful of money we're spending, blacktop the trail... Mayor Post: So, how much out of pocket to finish this up to the \$363,058 to just do that project? We might have another \$20,000 you said for site overview, or for somebody to oversee this project, we're going to pay them \$25,000? George: That's an estimate. Mayor Post: Just this one, just this phase. George: Just this phase, \$20-25,000. Mayor Post: I'm just trying to figure out if we're only talking about paying \$20,000, and we can go ahead and get all the balance of this money, for the \$363,000; you're saying the \$363,000 would be covered by federal funds? That's why I needed this Mr. Lane here tonight. C. Melson: Can't we re-negotiate to an extent, considering the fact that it is elaborate? Mayor Post: The funds are going to be gone in June, that's the problem. C. Melson: No, I meant quickly go back over it to see if there's things that we really do not have to have at this point. If it turns out to be a multi-phase thing, further than what we thought..... Mayor Post: That's what the alternates are then I guess maybe we could even go and ask for a legislature, what I'm thinking is can we use that \$60,000 for an alternate and do we have to go through this company for these alternates? Because if you're saying if they want to charge us for 8 lamp poles, \$118,000, we'd be better off to just negotiate with Connectiv direct and cut out the middle man. So anyhow, what I'm trying to say, how much more out-of-pocket to finish this phase 1? George: I don't know. I can ballpark it. About \$200,000. Mayor Post: Out-of-pocket? George: Yeah. Mayor Post: When that councilman left the last to keep this thing alive, he stated there was \$1,000,000 in funds. That should be right on that little machine. George: We don't have a million dollars. We have \$300-some thousand. It's not an approved grant. All you have is what you have in front of you. George: If you just do the phase, and none of the items below, just the bare essentials, you've got \$80,000 of Town funds in that. Mayor Post: We already have that. So that's going to money lost anyway, right. Councilman Harris, I am just trying to figure out if its saying here on this thing that the total, it just keeps going up I don't understand it, this total says \$407,546 but then there's a line Item D that says current construction has spent \$541,000, which does not include inspection. C. Prettyman: I have to go

back to what C. Betts brought up about C. Dvornick to have him to come in here and kinda go over this with us. This is the first time we're seeing this and he said one thing, and I remember at the last ending of the meeting, and I think it just needs clarification. Mayor Post: Didn't he say there was million dollars available? C. Betts: I think he needs to be here. C. Prettyman: I'm not going to get into what he said but I think we need to invite him and see if he will come to help make some clarification on this, because this is the first time I've seen it this evening. George: I think that's an excellent idea, however, I don't know if there's enough time to have him here before you lose this money. That's a fact. C. Betts: But can't he come downtown and talk to you George? Mayor Post: But when you say lose this money, all I'm hearing is that we're losing \$200,000 of our money. How much money are we losing? George: \$363,000. Mayor Post: \$345,046 it says here. What I'm confused about is if I apply \$345,046 to \$363,058, that doesn't look that bad to be in the negative when we have another \$60,000 from Carey, but then you're saying it's a couple hundred thousand, and forget the lighting, and forget the landscaping, and forget all those things below, just to get this first phase to this point, how much money will we receive to cover the \$363,058 of the first phase? George: If Carey comes through with the \$60,000, then you will be out \$40,000. Mayor Post: Well, that's not bad if that's the case. C. Prettyman: I would like to make a motion that we contact Mr. Dvornick to meet with the Town Manager to discuss this, so this can go forward. C. Betts: I agree. C. Prettyman: We can sit there and beat and battle ourselves to death and everything, and this is the first time I've seen it this evening, and this will give him because he knows more about the history on this than we do, and he has handled it. C. Harris: I agree with you Noble, but the only problem I think is you're looking at a time frame. Don't we have a deadline? C. Betts: We have until June. We have another council meeting. Stephanie: It has to go out in the beginning of May so it can be awarded the beginning of June and it has to be completely done, and paperwork done, by June 15th. C. Prettyman: Why can't he just meet with the Town Manager during the week one day that's convenient for both? Mayor Post: What other options do we have? C. Harris: To make a motion to do the basic work and absorb the \$60,000 hopefully if we get money from Carey, we'll end up \$20,000 or \$40,000 out-of-pocket. C. Frey: I don't think the people in Wagoman's that live along the trail want lighting back there. Mayor Post: And that's fine. That's at the next stage anyway. That's fine if there's no lighting. But I do think you're going to have to have trash receptacles. The thing is there's going to have to be something, unless you just want a street going through there, and that's technically what you're going to end up with. There's got to be some appeal to put to this to make people want to walk it as well. Forget the streetlights, but you should have some park benches. That's what encourages people, especially the elderly. C. Harris: I looked at those plans and I've done a lot of plans before, and I kept on thinking this is more like we'd see in an inner city throughway, where you want pedestrians to sit and linger. I thought that the Rail to Trails program was in general, a type of transit area for the exercise, ride their bikes, and to be honest with you, if there's five benches and people sitting their with their pets, the whole premise behind that was to be a Rails to Trails so you're riding through rather than lingering. But if you look at those plans, all that added funding, money, our downtown is not landscaped that heavily. Mayor Post: Then why don't we gravel it out there and not blacktop it? C. Harris: To be honest with you, I've seen it done before, and I don't have an issue with that. Mayor Post: Still, the Rails to Trails is to encourage, it's a walking path as well. It's that name because it uses rail lines converted to this type of use. The thing is, if you're making this investment, and your talking over a period of time, well over a million dollars, I think it should have little bit of appeal for multiple use than just somebody that wants to ride their bike. C. Hudson: We agree. We just think these amenities can be added later. C. Melson: You also need to consider that it also needs to be wheelchair accessible and smooth blacktop would be a lot easier than trying to fight gravel. Mayor Post: So I think the key

is, is do we want to tonight make a motion to not to exceed X amount of dollars, when the Town Manager meets with Mr. Dvornick, then that will determine if that is the amount of fund we need. We already have fund committed. And we are dealing with some pretty serious issues with Shipbuilders, regarding correcting people that have to go through 3' of water to get to their homes, which is more priority as well, because you're talking possible costs of \$150-\$200,000 out there, so keep that all in mind as we progress forward and what is priorities for this Town. I think, and I am all for the trails, our first priority should be straightening out Shipbuilders. C. Melson: Since this is a new administration, is it possible for us to get together shortly to come up with a priority list? Mayor Post: That would be a good idea as well. But I think the issue with this one is we are going to lose \$300-some thousand if we don't make a decision on taking this as well to the next level and if all we have is some blacktop slapped down between Chestnut and Federal, so be it. C. Frey: I would like to make a motion to allow the Town Manager to go to \$50,000 for this project if we can do it within \$50,000, out of the Town's pocket, for Phase 1. C. Harris: Second it. Mayor Post: We have a motion and a second, all in Favor say "Aye". Opposed – None. MC.

C. Hudson: Made motion to adjourn. C. Frey: Second. Mayor Post: Motion and second to adjourn, all in Favor say "Aye". Opposed – None. MC.

Meeting Adjourned at 8:50 p.m.

Respectfully submitted,

Julie Powers
Executive Secretary